

BRIEFING



OFT Market Study – advice for HBF members

14 August 2007

1. The OFT's market study

On 22 June 2007, the Office of Fair Trading ("**OFT**") launched a market study into housebuilding in the UK. In addition to the written submissions which it has already requested, the OFT may send detailed questionnaires to market participants and other interested parties and hold meetings with those parties. The OFT may also carry out customer research and surveys.

The possible outcomes of a market study are: giving the market a clean bill of health; publishing information to help consumers; encouraging firms to take voluntary action; encouraging a consumer code of practice; making recommendations to the

Government or sector regulators; investigation and enforcement action against companies suspected of breaching consumer or competition law; or a market investigation reference to the Competition Commission ("**CoCo**"), if the OFT has reasonable grounds for suspecting that any feature, or combination of features, of the market prevents, restricts or distorts competition.

2. Provision of information to the OFT during a market study

Recipients of an information request or questionnaire from the OFT during the course of a market study are not legally obliged to provide the OFT with the requested information. However, if the OFT does not receive adequate information, this may increase the likelihood of it referring the market to the CoCo for a drawn-out investigation. The CoCo has extensive powers to obtain information. It is therefore in the interests of HBF and its members to provide the OFT with information which it requests. If any member is contacted by the OFT, or has a particular concern relating to the information which it is asked to provide, that member would be well advised to seek its own legal advice.

Although there is no legal obligation to provide the OFT with information, the provision of false or misleading information to the OFT is a criminal offence, which is punishable by a fine, up to two years imprisonment, or both. It is therefore important not to give partial answers which would be misleading.

The scope of any discussion between HBF and its members, or amongst HBF's members, should be limited to discussing the impact of the OFT's market study in general terms. Under no circumstances should any part of the responses to the OFT be coordinated or discussed between HBF and its members, or amongst HBF's

members. Each member should compile their responses to the OFT independently and separately.

Under the Enterprise Act 2002 ("**EA**"), specified information relating to the affairs of an individual or any business of an undertaking must not be disclosed during the lifetime of the individual or while the undertaking continues in existence, unless the disclosure is permitted under certain limited exceptions in the EA.

The Freedom of Information Act 2000 ("**FOIA**") provides a general right of access to information held by public authorities, including the OFT. There are, however, certain exceptions to the obligation for public authorities to provide information under FOIA, for example, if disclosure of the information is prohibited by or under any enactment, such as the EA. This FOIA exception means that information obtained by the OFT during the course of a market study may not be disclosed under FOIA unless disclosure is specifically permitted under the EA, for example where the OFT discloses the information for the purpose of facilitating the exercise by it of a statutory function, or where the OFT discloses the information for the purposes of criminal proceedings.